

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JOSE DIAZ, Plaintiff,	:	MANDAMUS
	:	28 U.S.C. § 1361
	:	
v.	:	CIVIL ACTION NO.
	:	1:06-CV-2260-TWT
UNITED STATES DISTRICT COURT,	:	
Defendant.	:	

ORDER AND OPINION

Plaintiff, Jose Diaz, has submitted a document to the Court which the Clerk has filed as a mandamus petition brought pursuant to 28 U.S.C. § 1361. In his petition, Plaintiff complains that the law library at the Calhoun State Prison is inadequate, that the mail room "9 times out of ten" does not send out inmates' legal mail, and that the grievance procedure at the prison is time consuming and inadequate. Plaintiff states that he is seeking mandamus relief.

However, Plaintiff has submitted the instant civil action without submitting the \$350.00 filing fee, and this Court finds that he is not entitled to proceed in forma pauperis. According to Subsection (g) of 28 U.S.C. § 1915, a prisoner is prohibited from bringing a civil action in federal court in forma pauperis "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought

an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”

The records of the Clerk of the Court indicate that Plaintiff has filed at least three previous civil actions while a state prisoner, which were dismissed prior to service of process as frivolous pursuant to 28 U.S.C. § 1915. Plaintiff’s prior prisoner complaints that were dismissed as frivolous include the following: Diaz v. Conway, et al., No. 00-13973-I (11th Cir. 2001) (appeal from 1:00-CV-112-TWT); Diaz v. Conway, et al., 1:00-CV-1558-TWT (N.D. Ga. 2000); and Diaz v. DeLong, et al., 1:99-CV-3379-TWT (N.D. Ga. 2000). Furthermore, this Court finds no indication that Plaintiff is “under imminent danger of serious physical injury.” Accordingly, leave for Plaintiff to proceed in forma pauperis is hereby **DENIED**.

According to the Eleventh Circuit, “the proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed in forma pauperis pursuant to the three strikes provision of § 1915(g). The prisoner . . . must pay the filing fee at the time he initiates the suit.” Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002).

IT IS THEREFORE ORDERED that the instant action is hereby
DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 19 day of October, 2006.

Thomas W. Thrash
THOMAS W. THRASH, JR.
UNITED STATES DISTRICT JUDGE